

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EXPEDIA, INC.,

Plaintiff,

v.

RESERVATIONSYSTEM.COM, INC. d/b/a
BOOKIT.COM, INC., and LAURA VEGLIA
f/k/a LAURA WILDE,

Defendants.

CASE NO. C06-1580RSM

ORDER DENYING DEFENDANTS'
MOTION FOR CERTIFICATION

I. INTRODUCTION

This matter comes before the Court on defendants' motion for certification for appeal pursuant to 28 U.S.C. § 1292(b), asking that this Court certify its prior Order on the issue of personal jurisdiction to the Ninth Circuit Court of Appeals. Defendants argue that the Court's prior Order involves a controlling issue of law to which there is a substantial ground for difference of opinion, and that resolution of that question will materially advance the termination of this litigation. Plaintiff opposes the motion, arguing that the jurisdictional issue resolved by this Court is not novel and no substantial grounds for a difference of opinion over the law exist. (Dkt. #28). For the reasons set forth below, the Court agrees with plaintiff and DENIES defendants' motion for certification.

II. DISCUSSION

A. Background

Plaintiff has filed an action alleging breach of contract, tortious interference and

1 misappropriation of trade secrets, resulting from defendant Veglia leaving her employment with
2 plaintiff and starting new employment with defendant Bookit.

3 Bookit is a Florida Corporation engaged in the online marketing and sales of travel services.
4 It is a direct competitor to plaintiff. All but four of Bookit's employees are located in Florida, and
5 there are no employees located in Washington.

6 Veglia is a resident of Florida. She was formerly employed by plaintiff in its Ft. Lauderdale
7 office, where she worked for five years, and where she held the position of Director of Market
8 Management for the Americas region, which included Canada, the majority of the United States,
9 Mexico, Central America, South America and the Caribbean. In that position, Veglia was
10 responsible for assisting plaintiff in meeting its sales goals in the Caribbean, developing supplier
11 relationships, negotiating hotel contracts, promoting destinations and facilitating reservations
12 through plaintiff's website. Plaintiff alleges that through this position Veglia was privy to key
13 business and financial information, and other proprietary information such as plaintiff's software
14 program.

15 On or about October 26, 2006, defendant Veglia submitted her notice of resignation to
16 plaintiff. She began her employment with Bookit as Vice President of Sales on October 30, 2006.
17 Initially, Veglia was placed in charge of Bookit's Caribbean region.¹ The instant lawsuit followed.

18 Plaintiff initially requested an emergency temporary restraining order and expedited
19 discovery. The Court denied those requests, finding that plaintiff had failed to demonstrate
20 immediate and irreparable injury and failed to provide reasons why notice to the adverse party should
21 not be required. The Court also found that the jurisdictional issues raised in defendants' motion to
22 dismiss, or, in the alternative, motion to transfer venue should be reviewed prior to any discovery on
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24 ¹ Bookit asserts that since this lawsuit was filed and it received a copy of Veglia's employment
25 contract with plaintiff, it has removed Veglia from her position with the Caribbean region and moved her
26 to a different region where she will not have contact with the clients or customers with whom she dealt
while working for plaintiff in the previous twelve months.

1 the merits.

2 The Court subsequently determined that jurisdiction exists with respect to all defendants, and
3 that transfer was not appropriate. The instant motion followed.

4 **B. Improper Overlength Reply Brief**

5 As a preliminary matter, the Court addresses defendants' Reply brief. Defendants filed their
6 Motion for Certification on December 27, 2006, properly noting it for consideration on January 12,
7 2007. Pursuant to this Court's Local Rules, any Reply brief was therefore due January 12, 2007.
8 Local Rule CR 7(d)(3). Any such Reply brief was also limited to six pages in length. Local Rule CR
9 7(e)(4). Defendants filed their Reply on January 12, 2007; however, that Reply was nine pages in
10 length. Defendants did not seek leave to file an overlength brief as required by the Court's Local
11 Rules. *See* Local Rule CR 7(f).

12 Defendants then filed an Amended Reply on January 17, 2007, five days after their motion
13 was noted for consideration. The Amended Reply was six pages in length, and contained a footnote
14 stating that it was being filed to comply with the Court's Local Rules governing page length.
15 However, defendants did not first seek permission to file such Amended Reply.

16 Upon being admitted *pro hac vice* to this Court, defendants' counsel certified that he was
17 "charged with knowing and complying with all applicable local rules[.]" (Dkt. #7 at 1). Defendants
18 have provided no explanation as to why an improper overlength brief was filed in the first place, nor
19 have they provided any reason why they failed to ask this Court for permission to file their Amended
20 Reply after the noting date. Accordingly, the Court *sua sponte* STRIKES defendants' Amended
21 Reply as untimely, and STRIKES from consideration all overlength pages from the improper
22 overlength Reply brief that was initially filed.

23 **C. Certification Under 28 U.S.C. § 1292(b)**

24 Under 28 U.S.C. § 1292, when this Court,

25 in making in a civil action an order not otherwise appealable under this section,
26 shall be of the opinion that such order involves a controlling question of law as to

1 which there is substantial ground for difference of opinion and that an immediate
2 appeal from the order may materially advance the ultimate termination of the
litigation, he shall so state in writing in such order.

3 28 USCS § 1292(b). While defendants assert that all of the requirements of this statute have been
4 met, the Court is not persuaded.

5 First, the Court notes that defendants appear to have misconstrued, or at least misread, the
6 Court's previous Order. For example, defendants state that this Court based its decision about
7 jurisdiction over defendant Veglia "at least on part, on the convenience of the forum to other
8 parties." (Dkt. #26 at 6). That is not correct. This Court found jurisdiction over defendant Veglia
9 based solely on the forum selection clause contained in her written employment contract with
10 plaintiff. (Dkt. #25 at 6-7). Not once in its analysis of the forum selection clause does the Court
11 state or otherwise imply that its decision is based on the convenience of the parties.

12 Further, defendants appear to confuse the Court's analysis of the jurisdictional issues with its
13 analysis of the transfer issue. Defendants, misquoting the Court, assert that the Court concluded in
14 its previous Order that the choice of law question weighs "heavily in favor" of plaintiff. (Dkt. #26 at
15 7). Again, that is not correct. Instead, the Court, citing Ninth Circuit case law, noted that the
16 plaintiff's choice of forum is afforded substantial weight and that the moving party has the burden of
17 showing that the balance of convenience weighs heavily in favor of the transfer. (Dkt. #25 at 8).
18 With respect to choice of law, the Court actually noted that the factor would have weighed in favor
19 of defendants except that defendants had failed to demonstrate that Washington law would not
20 govern the contracts at issue, and, therefore, the factor weighed in favor of plaintiff.

21 Defendants also argue that this Court "has essentially concluded that any company that
22 actively does business over the Internet automatically submits itself to personal jurisdiction in every
23 state of this country." (Dkt. #26 at 4). The Court did not, in fact, make such a conclusion or adopt
24 such a broad rule. The Court simply noted that the Ninth Circuit Court of Appeals has already
25 explained that "the likelihood that personal jurisdiction can be constitutionally exercised is directly
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1 proportionate to the nature and quality of commercial activity that an entity conducts over the
2 Internet.” *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 419 (9th Cir. 1997) (citing *Zippo Mfg.*
3 *Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997)). Defendants fail to
4 acknowledge that the Court examined the facts of this case, and then determined that exercising
5 personal jurisdiction is constitutional and appropriate in light of those facts. In particular, the Court
6 focused on the fact that defendants make Internet sales in the state of Washington, and that
7 defendants had implicitly acknowledged that some of its business contracts are with entities located
8 in Washington State.

9 Finally, although they do not specifically ask this Court to certify its denial of transfer to the
10 Southern District of Florida, defendants appear to take issue with that portion of the Order as well.
11 (Dkt. #26 at 6-7). However, as plaintiff points out, that determination contained no controlling issue
12 of law, and therefore defendants fail to meet the requirements of section 1292(b).

13 For all of these reasons, the Court finds that defendants have failed to demonstrate any issue
14 requiring immediate certification to the Ninth Circuit. There is no controlling issue of law upon
15 which there could be substantial grounds for a difference of opinion. The fact that defendants
16 disagree with the Court’s analysis does not change that conclusion. Accordingly, defendants’
17 motion will be denied.

18 III. CONCLUSION

19 Having reviewed defendants’ motion, plaintiff’s opposition, defendants’ reply, and the
20 remainder of the record, the Court hereby ORDERS:

21 (1) Defendants’ Motion for Certification (Dkt. #26) is DENIED.

22 (2) The Clerk shall forward a copy of this Order to all counsel of record.

23 DATED this __23__ day of January, 2007.

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25 RICARDO S. MARTINEZ
26 UNITED STATES DISTRICT JUDGE